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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

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| In the Matter of |) | FPPC No.: 99/193 |
| |) | |
| |) | OAH No.: N2001020159 |
| |) | |
| DANNY LYNN GAMEL and RUDY |) | |
| MICHAEL OLMOS, |) | BRIEF FOLLOWING REMAND BY |
| |) | SUPERIOR COURT |
| |) | |
| |) | Commission Meeting Date: October 2, 2003 |
| Respondents. |) | |

The Enforcement Division submits this brief pursuant to the procedures set forth in a letter from Executive Director Mark Krausse to Chief of Enforcement Steven Benito Russo, dated September 5, 2003. This matter is before the Commission as a result of a superior court order of remand that was later affirmed on appeal. (Gamel v. Fair Political Practices Com. (Super Ct. Fresno County, 2002, No. 01CECG03495).) As directed by the superior court, the Commission must now reconsider the penalty imposed against Respondent Rudy Michael Olmos, and issue a written statement supporting the penalty, as reconsidered.

The first part of this brief summarizes the procedural history of the case as it relates to Respondent Rudy Michael Olmos. The second part of this brief lists three different actions that the Commission may wish to pursue in response to the remand by the superior court. Finally, the third part

1 of this brief discusses the appropriate considerations that the Commission should apply when
2 reassessing the penalty previously imposed upon Respondent Rudy Michael Olmos.

4 **CONCISE PROCEDURAL HISTORY**

5 Respondent Danny Lynn Gamel is the owner of a chain of recreational vehicle dealerships, and
6 Respondent Rudy Michael Olmos is his employee. (Final FPPC Decision (“Decision”) at p. 2.) In
7 October 1996, Respondent Gamel asked Respondent Olmos and other employees to make a \$975
8 campaign contribution to Ken Steitz, a candidate for the Fresno City Council. (Decision at p. 2.) In
9 response to Respondent Gamel’s request, Respondent Olmos made a \$975 campaign contribution to Ken
10 Steitz, a candidate with whom he was not familiar. (Decision at pp. 2-3.) At the time, the local
11 contribution limit in Fresno was \$1,000 per person.

12 In October 2000, the Enforcement Division initiated an administrative enforcement action
13 against Respondent Gamel and Respondent Olmos. In the charging documents, the Enforcement
14 Division accused Respondent Gamel of illegally making contributions in names other than his own, in
15 violation of Government Code section 84301. The Enforcement Division also accused Respondent
16 Olmos of acting as an intermediary for one of those contributions without disclosing Respondent Gamel
17 as the true source of the contribution, in violation of Government Code section 84302.

18 An evidentiary hearing was held in this matter on May 30, 2001. During the hearing,
19 Respondent Olmos denied that he was reimbursed by Respondent Gamel for the \$975 contribution that
20 he made to Ken Steitz. (Decision at p. 3.) The administrative law judge (“ALJ”) who presided over the
21 hearing issued her proposed decision on June 25, 2001. In the decision, notwithstanding the testimony
22 of Respondent Olmos, the ALJ made a finding that Respondent Gamel reimbursed Respondent Olmos
23 for the \$975 contribution that he made to Fresno City Council candidate Ken Steitz. (Decision at p.3.)
24 Based on this finding, the ALJ concluded that Respondent Olmos violated Government Code section
25 84302 as alleged by the Enforcement Division, and for that violation should pay the maximum
26 administrative penalty of \$2,000. (Decision at pp. 6-8.) On September 14, 2001, the Commission
27 adopted the proposed ALJ decision in its entirety, and ordered Respondent to pay the proposed
28 maximum administrative penalty of \$2,000.

Respondent Olmos challenged the final decision in superior court. The superior court did not disturb the finding by the ALJ that Respondent Olmos committed a violation of Government Code section 84302, by acting as an intermediary for a contribution without disclosing the true source of the contribution. However, regarding the penalty that the Commission imposed upon Respondent Olmos, the court ordered that the Commission “reassess the appropriate fine” by completing an “assessment of factors in aggravation and mitigation,” and “issue a written statement” regarding the penalty imposed.

AUTHORITY OF THE COMMISSION TO REASSESS PENALTY AFTER REMAND

In its order, the superior court vacated the section of the ALJ decision that set the amount of the penalty to be imposed on Respondent Olmos. The issue of the penalty is now before the Commission. Under Government Code section 11517, subdivision (c), the Commission may now take one of the following actions:

- Decide the penalty issue upon the record without taking additional evidence.
- Decide the penalty issue upon the record, and hear additional evidence.
- Refer the penalty issue to the ALJ, who will hear additional evidence.

After a formal administrative hearing in this case, the ALJ considered all of the evidence submitted by both parties and reached a number of factual findings. The factual findings are set forth in the final decision and provide sufficient information for the Commission to make a determination regarding the appropriate penalty amount. The Enforcement Division therefore recommends that in reconsidering the penalty imposed on Respondent Olmos, the Commission base its decision on the factual findings of the ALJ without taking additional evidence. If the Commission elects to make a decision based on the factual findings of the ALJ, it will not be necessary to refer the case back to the ALJ for the purpose of taking additional evidence.

APPROPRIATE PENALTY AMOUNT

In framing a proposed order following a finding of a violation of the Political Reform Act, the Commission and the ALJ should consider all of the surrounding circumstances of the violation including, but not limited to, the following considerations:

- The seriousness of the violation.
- Whether there was intent to conceal, deceive, or mislead.
- Whether the violation was deliberate, negligent, or inadvertent.
- Whether the violator demonstrated good faith by consulting Commission staff or any other governmental agency.
- Whether the violation was isolated or part of a pattern, and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- In reporting cases, whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. (Regulation 18361, subd. (e).)

In assessing the surrounding circumstances of past campaign money laundering cases, including the factors listed above, the Commission has historically imposed the most severe penalties in such cases because of the significant public harm involved. The consequence of a contributor making a secret contribution through a willing conduit is the disclosure of false information to the electorate regarding a candidate's financial support. The timely disclosure of accurate information regarding a candidate's financial backing is one of the core purposes of the Political Reform Act. (Govt. Code § 81002, subd. (a).) Campaign money laundering is a deliberate effort to thwart that purpose.

Historically, the Commission has prosecuted both contributors and intermediaries in money laundering schemes, and has imposed severe penalties upon both types of violators. For example, in 2001, in the *Matter of Alan Schwartz*, FPPC No. 01/162, the Commission approved a stipulated penalty that imposed a penalty of \$58,000, out of a possible \$60,000, on an intermediary who made 30 contributions on behalf of another without disclosing the true source of the contributions. Similarly, in 1999, in the *Matter of Marcie and Joseph de los Santos*, FPPC No. 97/454, the Commission approved a default decision and order that imposed the maximum administrative penalty of \$2,000 against a married couple who made a contribution on behalf of another without disclosing the true source of the contribution.

Considering the circumstances surrounding Respondent Olmos' violation, the aggravating circumstances of his case far outweigh the mitigating circumstances:

1 **Severity of Violation** – The conduct of participating in a campaign money laundering scheme
2 has been recognized by the Commission as one of the most egregious violations of the Act, and has
3 historically been punished with the severest penalties applicable. In contrast, the conduct of making a
4 technical mistake on a campaign statement is one of the least egregious violations of the Act, and
5 generally has not warranted the imposition of a penalty.

6 In this matter, Respondent Olmos agreed to participate in a campaign money laundering scheme
7 by making a campaign contribution at the request of his employer, and therefore committed one of the
8 most egregious violations of the Act. (Decision at p. 2.) The seriousness of his conduct is an
9 aggravating circumstance.

10 **Intent to Conceal, Deceive, or Mislead** – When making a contribution on behalf of his
11 employer, Respondent Olmos intended to conceal the true source of the contribution by failing to notify
12 the candidate that the source of the contribution was Respondent Gamel. (Decision at pp. 2-3.)
13 Respondent Olmos perpetuated this deception at the hearing while testifying under oath that he was not
14 reimbursed. Respondent’s pattern of deception is an aggravating circumstance. (Decision at p. 3.)

15 **Deliberate or Negligent Violation** – As directed by Respondent Gamel, Respondent Olmos
16 made a \$975 campaign contribution to an unfamiliar candidate knowing that he would receive
17 reimbursement for the contribution from Respondent Gamel. (Decision at pp. 2-3.) Although
18 Respondent Gamel was the mastermind of the campaign money laundering scheme, Respondent Olmos
19 nevertheless agreed to go along with the scheme. (Decision at pp. 2-3.) The employer/employee
20 relationship of Respondent Gamel and Respondent Olmos does not negate that Respondent agreed to
21 participate in the laundering scheme. In fact, the economic relationship between the two respondents
22 highlights Respondent Olmos’ motive for participating in the scheme. As such, Respondent’s
23 deliberate conduct as a cooperative intermediary is an aggravating circumstance.

24 **Good Faith Consult** – There is no evidence that Respondent Olmos consulted with the
25 Commission or any other governmental agency regarding his conduct as an intermediary for a laundered
26 contribution.
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28

Prior Record of Enforcement – A review of the Commission’s enforcement records reveal that Respondent has never been the subject of a previous enforcement action by the Commission. Respondent’s absence of a prior record of enforcement is the only mitigating circumstance in this case.

CONCLUSION

The conduct of laundering campaign funds is, by its nature, a deliberate attempt to conceal information from the voters. Respondent Olmos agreed to assist Respondent Gamel to launder campaign funds. Accordingly, the facts of this case, including the aggravating and mitigating circumstances discussed above, justify imposition of the maximum administrative penalty of \$2,000.